

Part I

Section 6020.—Returns Prepared For or Executed by Secretary

26 CFR 301.6020-1T: Returns prepared or executed by the Commissioner or other internal revenue officers (temporary)
(Also: 6213(d))

Rev. Rul. 2005-59

ISSUES

1. Are documents made by the Internal Revenue Service, as authorized under section 6020(b) of the Internal Revenue Code, joint returns of income tax for the husband and wife?
2. Is a document prepared by the Service under section 6020(a) and executed by a husband and wife a joint return of income tax for the husband and wife?
3. Is a Form 870 prepared by the Service and executed by a husband and wife a joint return of income tax for the husband and wife?

SITUATION 1

Taxpayers, husband and wife, failed to file a return for the 1999 tax year. A revenue agent was assigned to secure the return. The taxpayers did not provide the revenue agent all information necessary for the preparation of the return. The revenue agent made separate returns using information from other sources using tax rates applicable to married individuals filing separate returns. The taxpayers did not sign the documents made by the revenue agent.

SITUATION 2

The taxpayers, husband and wife, failed to file a return for the 1999 tax year. A revenue agent was assigned to secure the return. The taxpayers provided the revenue agent with all information necessary for the preparation of the return and expressed their intention to file a joint return. The revenue agent prepared a joint return using the information provided by the taxpayers. The taxpayers signed the joint return prepared by the revenue agent under penalties of perjury.

SITUATION 3

The taxpayers, husband and wife, failed to file a return for the 1999 tax year. A revenue agent was assigned to secure the return. The taxpayers did not provide the revenue agent all information necessary for the preparation of the return. The revenue agent did not prepare a joint return and instead prepared a Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, and the taxpayers consented to the immediate assessment of taxes

for the 1999 tax year by signing the Form 870. Form 870 is not verified by a written declaration that it is made under the penalties of perjury.

LAW

In general, a document filed with the Service is treated as a return if the document: (1) contains sufficient data to calculate the tax liability; (2) purports to be a return; (3) represents an honest and reasonable attempt to satisfy the requirements of the tax law; and (4) is executed under penalties of perjury. Beard v. Commissioner, 82 T.C. 766, 777 (1984), aff'd, 793 F.2d 139 (6th Cir. 1986) (citing Badaracco v. Commissioner, 464 U.S. 386 (1984); Zellerbach Paper Co v. Helvering, 293 U.S. 172 (1934); and Florsheim Bros. Drygoods Co. v. United States, 280 U.S. 453 (1930)).

Section 6013 generally authorizes a husband and wife to make a single return jointly of income tax. Section 1.6013-1(a)(1) of the Income Tax Regulations provides that a husband and wife may elect to make a joint return. Taxpayers must make an election to make a joint return on a validly filed return.

Section 6020(a) authorizes the Secretary to prepare a return for a taxpayer who fails to make and file a return if the taxpayer discloses all information necessary for the preparation of the return. If the taxpayer signs the return prepared by the Secretary, the return may be received as the taxpayer's return.

If a taxpayer fails to make a return, or makes a false or fraudulent return, section 6020(b) authorizes the Secretary to make a return from his own knowledge and from such information as he can obtain through testimony or otherwise.

Section 6065 requires that a return “shall contain or be verified by a written declaration that it is made under the penalties of perjury.”

Joint return filing status under section 6013(a) is predicated on the husband and wife making an election and intending to file a joint return.

Accordingly, the Service may not elect joint filing status on behalf of taxpayers in a return it prepares and signs under the authority of section 6020(b). See Millsap v. Commissioner, 91 T.C. 926 (1988), acq. in result, 1991-2 C.B. 1 (filing status used by IRS in preparing return under section 6020(b) does not bind taxpayers in later deficiency proceeding).

ANALYSIS

SITUATION 1

In Situation 1, the documents made by the revenue agent under the authority of section 6020(b) are not returns of income tax filed by the husband and wife for purposes of section 6013 because they did not sign the returns under penalties of perjury. The documents made by the revenue agent under the authority of section 6020(b) also do not constitute valid elections to file a joint return under section 6013.

SITUATION 2

In Situation 2, the document prepared by the revenue agent under the authority of section 6020(a) was signed by the husband and wife under penalties of perjury. The section 6020(a) document (1) contains sufficient data to calculate the tax liability, (2) purports to be a return, (3) represents an honest and reasonable attempt to satisfy the requirements of the tax law, and (4) is executed under penalties of perjury. The section

6020(a) document, therefore, constitutes a valid return under the four-part Beard test and, because it is signed by both the husband and wife, it is a joint return of income tax for purposes of section 6013.

SITUATION 3

A Form 870, although signed by both husband and wife, is not verified by a written declaration that it is made under the penalties of perjury. A Form 870 is not a return under the Beard test because it does not purport to be a return and it is not signed under penalties of perjury as required by section 6065. Beard, 82 T.C. at 777.

In Rev. Rul. 74-203, 1974-1 C.B. 330, the Service determined that a Form 870 signed by taxpayers, husband and wife, was a return of the taxpayers for purposes of section 6020(a) and a valid election to file a joint return under section 6013. Rev. Rul. 74-203 is inconsistent with Beard and the cases cited therein on what constitutes a valid return, because a Form 870 does not purport to be a return and is not executed under penalties of perjury.

HOLDINGS

ISSUE 1. Documents made under the authority of section 6020(b) that are not signed by the taxpayers under penalties of perjury are not returns filed by the taxpayers for purposes of section 6013 and are not valid elections to file a joint return.

ISSUE 2. A document prepared by the Service under the authority of section 6020(a) that is signed by the taxpayers under penalties of perjury is a return of the taxpayers for purposes of section 6013 and constitutes a valid election to file a joint return.

ISSUE 3. A Form 870, which includes a waiver signed by the taxpayers, is not a return filed by the taxpayers for purposes of section 6013 and does not constitute a valid election to file a joint return. This holding also applies to Form 1902, Report of Individual Income Tax Audit Changes (obsoleted 1988), and Form 4549, Income Tax Examination Changes, and any successor forms to these forms.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 74-203 is revoked. A Form 870 signed by taxpayers, husband and wife, is not a return under section 6020(a) and it is not an election to file a joint return under section 6013. This holding also applies to Form 1902, Report of Individual Income Tax Audit Changes (obsoleted 1988), and Form 4549, Income Tax Examination Changes, and any successor forms to these forms, because these documents do not purport to be returns and do not contain a jurat with a penalties of perjury clause.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael E. Hara of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Michael E. Hara on (202) 622-4910 (not a toll-free call).